

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

Kimberly Foster,	:	
	:	Civil Action No.: 3:14-cv-00091
Plaintiff,	:	
v.	:	
The Swiss Colony, LLC d/b/a Ginny's, Inc.,	:	COMPLAINT
Defendant.	:	
	:	
	:	

For this Complaint, the Plaintiff, Kimberly Foster, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
2. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b), in that Defendant transacts business here, Plaintiff resides in this judicial district, and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

3. The Plaintiff, Kimberly Foster ("Plaintiff"), is an adult individual residing in Midlothian, Texas, and is a "person" as defined by 47 U.S.C. § 153(10).
4. Defendant The Swiss Colony, LLC d/b/a Ginny's, Inc. ("Swiss"), is a Wisconsin business entity with an address of 1112 Seventh Avenue, Monroe, Wisconsin 53566-1364, and is a "person" as defined by 47 U.S.C. § 153(10).

FACTS

5. Beginning in or around October 2013, Swiss started calling Plaintiff twice daily on her cellular telephone.

6. At all times mentioned herein, Swiss called Plaintiff using an automated telephone dialer system (“ATDS”) and/or by using an artificial or prerecorded voice.

7. Plaintiff has no prior business relationship with Swiss and never provided her consent to be contacted on her cellular telephone.

8. When she answered the ATDS calls, Plaintiff heard a prerecorded message stating “This is Ginny’s...we are trying to reach Timothy Foster...please give us a call back...” Plaintiff was only able to speak with a live representative from Swiss after she heard this message.

9. During a conversation in or about November 2013, Plaintiff informed Swiss that she was not responsible for the account Swiss was calling about and requested Swiss cease calling her cell phone.

10. Nonetheless, Swiss proceeded to place at least ten (10) additional ATDS calls to Plaintiff.

COUNT I

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, et seq.

11. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

12. Without prior consent the Defendant contacted the Plaintiff by means of automatic telephone calls or prerecorded messages on her cellular telephone in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

13. Despite having no consent to contact Plaintiff on her cell, and despite Plaintiff advising Defendant she was not responsible for the account they were calling about and to cease all such calls, Defendant continued to place automatic telephone calls to Plaintiff's cellular telephone. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

14. The telephone number called by Defendant was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

15. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

16. The foregoing acts and omissions of the Defendant constitute numerous and multiple violations of the Telephone Consumer Protection Act, including every one of the above-cited provisions.

17. As a result of each of Defendant's negligent violations of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

18. As a result of each of Defendant's knowing and/or willful violations of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendant:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(1)(A);

2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: January 13, 2014

Respectfully submitted,

By /s/ Jody B. Burton

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